IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 410 OF 2007.

Hindustan Petroleum Corporation Ltd. ... Appellant.
Versus.
Lt.Col.(Retd.) Neelkanth Raghavendra Purandare and another. ... Respondents.

Shri M.D.Siodia i/by M/s.Rustamji and Ginwala for the Appellant.

CORAM : ABHAY S.OKA, J.

DATED : 6th June, 2007.

P.C.:

1. The Appeal is by the original Plaintiff the Hindustan Petroleum Corporation Ltd. for challenging the order passed by the trial Court by which an application for temporary injunction made by the Appellant has been rejected.

2. The predecessor of the Appellant was inducted in the suit property on the basis of an Indenture of Lease dated 2nd November 1966 executed by the Respondents. The Respodnents are admittedly the owners of the suit property. It is not in dispute that as of today the Appellant is in possession. The case of the Appellant is based on a letter dated 14th July 2000 addressed by the Respondents to the Appellant. The said letter is addressed without prejudice to their rights and contentions. In the said letter, the Respondents have

stated thus:

> . "However, in order to settle the matter amicably and expeditiously, we are prepared to reconsider. Please note that we have been deprived of higher rental of the property (minimum Rs.20,000/- p.m.) for the last five years. We feel you should agree to the price of Rs.87.5 lakhs. The entire cost of conveyance, stamp duty and other incidental expenditure is to be borne by the HPCL."

The suit for specific performance of an alleged agreement for sale was filed on the basis of the offer contained in the said letter dated 14th July 2000.

3. The learned Counsel appearing for the Appellant invited my attention to the correspondence between the parties. He pointed out that the learned trial Judge has completely ignored the fact that the offer given by the Respondents was specifically accepted by the Appellant by letter dated 2nd December 2002. He invited my attention to the letter dated 8th December 2003 sent by the Appellant to the Respondents. He submitted that the offer given by the Respondents was accepted by the Appellant and the sale deed could not be executed because the Respondents failed to make compliance of the

requisitions set out in the letter dated 8th December 2003. He submitted that the impugned order is vitiated as the aforesaid letter dated 2nd December 2002 is not considered.

4. I have considered the submissions. By the letter dated 2nd December 2002, the offer given by the Respondents vide their letter dated 14th July 2000 was purportedly accepted by the Appellant. The Appellant has stated in the said letter that the process of executing sale deed has been initiated. By the letter dated 8th December 2003, the Appellant has demanded certain documents from the Respondents and has also called upon the Respondents to make various compliances. The averments made in the plaint do not refer to any correspondence made by the Appellant after 8th December 2003. It is not set out in the plaint as to what steps were taken by the Appellant after 8th December 2003. The suit for specific performance is filed on 6th December 2006.

5. The offer was given without prejudice by the Respondents in the year 2000. Even going by the case of the Appellant as it is, the said offer was accepted by the Appellant in the year 2002. Admittedly no part of the consideration has been paid by the Appellant to the Respondents. Delay and laches in filing the suit by

itself was a sufficient ground to refuse the discretionary relief of injunction especially when no consideration has been paid by the Appellant to the Respondents. Prima-facie, it appears that material terms and conditions of sale were never agreed by and between the parties. Therefore, prima-facie, there is no concluded agreement for sale.

6. I find no fault with the discretionary order passed by the trial Court. As stated earlier, the Appellant claims to be in possession of the property as tenant even as of today. The Appeal is dismissed. It is obvious that all further transactions in respect of the suit property will be subject to the final outcome of the suit.

Judge.